

REMARKS

In a first action dated January 12, 2007, the Examiner rejected all of the pending claims under 35 U.S.C. § 102(b) as allegedly anticipated by D'Amico *et al.* (US 5,606,729). In a second action, dated December 12, 2007, those rejections were replaced by obviousness rejections, under 35 U.S.C. § 103, over D'Amico in view of Voyer (US 6,952,459). In that action, the Examiner declined to address any of Applicant's arguments with respect to D'Amico, asserting that those arguments were "moot in view of the new grounds of rejection." This was despite the fact that those arguments demonstrated that D'Amico in fact fails to disclose any of the claimed features of the present invention.

In the present Office Action, dated May 30, 2008, the Examiner again withdraws the previous rejections, and replaces them with essentially identical obviousness rejections, over D'Amico (again) in view of Tsujita (US 6,078,822). Indeed, in four pages of ostensibly detailed rejections, Tsujita is applied exactly once, in two sentences, with the remaining detailed rejections based exclusively on the alleged teachings of D'Amico. Nonetheless, the Examiner again has declined to address any of Applicant's arguments with respect to the defects of D'Amico, asserting once more that these arguments are "moot in view of the new grounds of rejection."

The substitution of Tsujita for Voyer as the secondary reference in the present obviousness rejections is of no avail, as Tsujita is actually of even less relevance than Voyer. The Office Action admits (for the second time) that D'Amico fails to disclose a measurement of noise at a base station during periodic silent intervals, and alleges that Tsujita supplies this missing teaching. In fact, Tsujita is devoid of any reference to noise, interference, or the like. Tsujita likewise makes absolutely no mention or suggestion of periodic silence intervals, and does not discuss measurements of any sort. Applicant thus can discern no basis whatsoever for the Office Action's assertion that Tsujita discloses this feature of the claimed invention.

Further, the Office Action provides only a conclusory "rationale" for combining the alleged teachings of D'Amico with the alleged teachings of Tsujita, asserting that it would have been obvious to combine the references "for the purpose of ensuring that an accurate measurement of the noise is obtained." As was amply demonstrated in previous responses, D'Amico is not directed at all to the measurement of noise at a base station, but is instead concerned with measuring signal quality in a mobile receiver. Tsujita never mentions noise at all. Thus, it is clearly absurd to suggest that a skilled practitioner would (or could) combine the teachings of these references to obtain the methods and apparatus claimed in the present application for measuring noise at a base station in a mobile communication system.

Applicant incorporates by reference its remarks presented in responses dated April 11, 2007, and March 12, 2008. These previously presented remarks detailed the numerous deficiencies of D'Amico with respect to the present invention; these deficiencies are directly applicable to the present rejections. As demonstrated above, the present Office Action's reliance on Tsujita is also without merit. Applicant requests a good faith reconsideration of the present application in view of the above arguments and the previously submitted remarks, and allowance of the present claims.

COATS & BENNETT, P.L.L.C.



Daniel P. Homiller
Registration No.: 55,275

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1400 Crescent Green, Suite 300
Cary, NC 27518
Telephone: (919) 854-1844
Facsimile: (919) 854-2084